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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,230	07/30/2003	Ronald F. Englhard	HAYESPR.035A	8289
20995	7590	04/20/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			GORMAN, DARREN W	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/630,230	Applicant(s) ENGLHARD ET AL.	
	Examiner Darren W Gorman	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,11,14,15,18-21,25,26,33,38,39,43,46 and 47 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31 and 32 is/are allowed.
- 6) ☒ Claim(s) 1-3,6-10,12,13,16,17,22-24,27-30,34-37,40-42,44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/31/03 12/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species Group I in the reply filed on March 11, 2005 is acknowledged.
2. Claims 4, 5, 11, 14, 15, 18-21, 25, 26, 33, 38, 39, 43, 46, and 47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 11, 2005.

Information Disclosure Statement

3. The IDS forms filed on October 31, 2003 and December 15, 2004 are hereby acknowledged and have been placed of record. Please find attached a signed and initialed copy of each PTO 1449.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, an embodiment showing the valve chamber including an annular recess and the valve including an annular ridge, as recited in claim 41, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "60" in Figure 6 and "49" in Figure 8 appear to both designate the "end wall" of the cylindrical bore (22).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “40” appears to designate both an outer surface of the supply connection port in Figure 1 and the dip tube in Figure 6. Further, reference character “102” is used to designate the vent sealing portion and an end portion of second passage (104) in Figure 10. Note also that the specification refers to “102” as both the “vent sealing portion” and the “chemical inlet passage”. Corrective action in appropriate portions of the specification is also required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference

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characters “47” and “54” in Figure 6 and reference character “49” in Figure 8 are not mentioned in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

8. The disclosure is objected to because of the following informalities: On page 7, paragraph [0049], line 2, “Figures 1-12C” should be replaced with --Figures 1-12B--, since “Figure 12C” does not exist in the instant application.

Appropriate correction is required.

Minor Claim Suggestions By Examiner

9. The following change(s) are recommended to improve clarity of the claims. The claims have been examined on the merits including the suggested changes below.

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In claim 34, on line 6, "rotating a valve" should be replaced with --rotating the valve--, since the invention as understood only includes one valve, which was previously recited on line 2 of the claim.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

11. Claims 1-3, 6-10, 12, 13, 16, 17, 22-24, 27-30, 34-37, 40-42, 44, and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims will be examined as best understood by the Examiner.

Regarding claim 1, on line 15, the recitation "the chemical fluid passage" is unclear. Previously recited in the claim are "a chemical passage" and "a chemical inlet passage". It is unclear which one of these elements "the chemical fluid passage" has antecedent basis to.

Regarding claim 12, line 16, the recitation "the chemical fluid passage" is unclear. Previously recited in the claim are "a chemical passage" and "a chemical inlet passage". It is unclear which one of these elements "the chemical fluid passage" has antecedent basis to.

Regarding claim 22, on line 16, the recitation "the chemical fluid passage" is unclear. Previously recited in the claim are "a chemical passage" and "a chemical inlet passage". It is unclear which one of these elements "the chemical fluid passage" has antecedent basis to.

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Regarding claim 29, the fourth passage in the invention as understood by the Examiner is only in communication with the vent passage in the third position, not in the first position as recited.

Regarding claim 30, the recitation “the sealing portion” is unclear. Since, as recited in claim 27, there is “at least” one sealing member defining a sealing portion, then it could reasonably be interpreted that there could be multiple sealing members defining multiple sealing portions. For this reason, the recitation, “the sealing portion” in claim 30 is unclear because it cannot be determined which of the possibly multiple sealing portions this recitation has antecedent basis to.

Regarding claim 34, on lines 6-7, the recitation “rotating a valve about the longitudinal axis such that a chemical inlet passage of the valve is aligned with the rinsing liquid passage” is completely unclear. As understood by the Examiner, the chemical inlet passage (reference number 114) is never aligned with or in communication with the rinsing liquid passage (reference number 56) when in the “RINSE” position as shown in Figure 8.

Applicant’s assistance in explaining what is being claimed would be appreciated.

Further regarding claim 34, on lines 12-15, the recitation “and in the second position, the first passage is configured to be in communication with the carrier fluid passage and the second passage is configured to be in communication with the chemical passage”, is completely unclear. The Examiner assumes that this “second” position is supposed to be the “CLEAN” position where chemical is being aspirated into the carrier fluid stream, however this recitation is inconsistent with this assumption because the “first passage” (as consistent with the disclosure) is the passage designated by reference number “88”. Reference number “88” is not in fluid

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communication with either the chemical passage or the carrier fluid passage in the elected embodiment when in the “CLEAN” position as shown in Figure 10. The “second passage” (as consistent with the disclosure) is the passage designated by reference number “104”. Reference number “104” is in communication with BOTH the chemical passage and the carrier fluid passage in the “CLEAN” position as shown in Figure 10. For these reasons, the recitations on lines 12-15 in claim 34 are completely unclear in view of the elected embodiment.

Regarding claim 35, on lines 10-11, the recitation “the valve defining a first passage and a second passage that is in communication with the first passage” is completely unclear. In the elected embodiment, the first passage (reference number “88”) as shown in Figure 8 is an entirely different and unrelated passage from the second passage (reference number “104”) as shown in Figure 10. As understood by the Examiner, these passages are rotated into and out of fluid communication with the carrier fluid passage (56) depending on the valve position as selected by the user. The first and second passages are never in communication with each other.

Regarding claim 40, on line 14, the recitation “the chemical fluid passage” is unclear. Previously recited in the claim are “a chemical passage” and “a chemical inlet passage”. It is unclear which one of these elements “the chemical fluid passage” has antecedent basis to.

Regarding claim 44, on line 2, the recitation “the valve bore” lacks antecedent basis in the claim. It is not understood what element this is referring to.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 22, 27, 34, 35, 40, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Sharp, USPN 3,291,395.

Regarding apparatus claims 22, 27, 35, 40, and 45, Sharp shows a sprayer head assembly (2) connected to a chemical container (6), the sprayer head assembly comprising: a chemical passage (44) having an outlet (40) defining a chemical outlet axis; a carrier fluid passage (18) having an outlet (20) defining a carrier fluid outlet axis; a housing (22) defining a valve chamber; and a valve (62) moveably positioned within the valve chamber between at least a first position, a second position, and a third position, the valve defining a first passage (84), a second passage (80), and a chemical inlet passage (94) that is in communication with the second passage, the valve being configured such that, in the first position (OFF), the valve blocks the chemical and carrier fluid passages (not shown; see column 5, lines 5-7), in the second position (RINSE), the first passage is in communication with the carrier fluid passage while the valve blocks the chemical passage (see Figure 5; and column 5, lines 8-13), and in the third position (CLEAN), the second passage is in communication with the carrier fluid passage and the chemical inlet passage is in communication with the chemical passage (see Figure 2; and column 5, lines 13-26), wherein the valve is further configured to rotate about a first (longitudinal) axis that is substantially parallel to the carrier fluid passage and carrier fluid outlet axis and substantially perpendicular to the chemical outlet axis (see Figures 2-5), wherein the valve is nested within the valve chamber such that the valve is prevented from moving radially with respect to the first (longitudinal) axis by the valve chamber (see Figures 2-5), and wherein the valve includes an

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annular gripping surface (106) positioned on an exterior surface of the valve, the gripping surface extending around the first (longitudinal) axis (see Figures 1-6). Sharp further shows the sprayer head assembly wherein the valve chamber further comprises at least one recess in which at least one sealing member is positioned, one (54) of the at least one sealing member defining a sealing portion which extends around a first interface between the carrier fluid passage and the valve and another (50) of the at least one sealing member defining a sealing portion which extends around a second interface between the chemical passage and the valve (see Figures 2-5; and column 4, lines 4-8).

Regarding the method of operating a chemical sprayer, as recited in claim 34, the apparatus shown by Sharp and discussed above with respect to the apparatus claims, would inherently perform each of the recited method steps during normal operation of the apparatus.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 28, 29, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp, in view of Englhard et al., USPN 5,213,265.

As discussed above, Sharp shows all the claimed limitations as set forth in claims 27 and 40, however Sharp does not expressly teach the sprayer head assembly wherein the valve defines a fourth passage, which when the valve is in the third position, (i.e. the CLEAN or aspirating

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position), the fourth passage is in communication with a vent passage, thereby allowing communication between the interior of the container with the atmosphere.

Englhard et al. shows a single valve aspiration-type sprayer head assembly including a valve which defines a dedicated passage (32) having a vent opening (73), which when the valve is in an aspirating position, the dedicated passage and vent opening are in communication with a vent passage (92) (see Figure 4; and column 4, lines 55-62), thereby allowing communication between the interior of the container with the atmosphere during use in the aspirating position, such that aspiration is improved and negative pressure within the container, which could lead to implosion of the container, is reduced or prevented.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a dedicated passage and vent opening, such as taught by Englhard et al., as a fourth passage and vent opening in the valve shown by Sharp, and to include a vent passage, such as taught by Englhard et al., in the sprayer head assembly shown by Sharp, such that communication between the interior of the container and the atmosphere during use in the aspirating spray position is allowed, whereby aspiration of the chemical into the carrier fluid stream is improved, and negative pressure possibly leading to implosion of the container is prevented.

Allowable Subject Matter

16. Claims 31 and 32 are allowed.

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Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Shanklin et al. and Ketcham et al. are cited as of interest.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W Gorman whose telephone number is 571-272-4901.

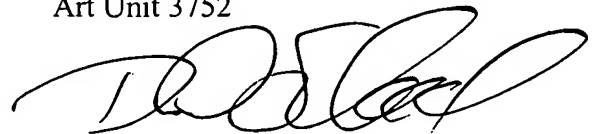
The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4901. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman
Examiner
Art Unit 3752

DWG 4/6/05
DWG
April 6, 2005



David A. Scherbel
Supervisory Patent Examiner
Group 3700